

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VICKI S. REEVES,) CASE NO. C11-5321-MJP-MAT
Plaintiff,)
v.) REPORT AND RECOMMENDATION
MICHAEL J. ASTRUE, Commissioner) RE: SOCIAL SECURITY DISABILITY
of Social Security,) APPEAL
Defendant.)

Plaintiff Vicki S. Reeves proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's application for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends that this matter be REVERSED AND REMANDED for further administrative proceedings.

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**REPORT AND RECOMMENDATION
RE: SOCIAL SECURITY DISABILITY APPEAL
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FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1955.¹ She finished sixth grade and previously worked as a housekeeper (AR 38, 106-07). Plaintiff filed an application for DIB and SSI on April 12, 2007 alleging disability beginning December 31, 1976. Her application was denied at the initial level and on reconsideration, and she timely requested a hearing. At the hearing, plaintiff amended her disability onset date to April 12, 2007. Because the amended date was after her date last insured, she concedes that she is ineligible for DIB. (AR 1, 36; Plaintiff's Opening Brief at p. 1 n.1).

9 Plaintiff contends that she has been unable to work since April 12, 2007 due to the
10 following conditions: anxiety, depression, borderline personality disorder, obsessive
11 compulsive disorder, manic depression, bacterial infection of the lungs, menopause, and
12 muscle spasms. (AR 21, 126). She alleges that she is unable to work because, due to her
13 conditions, "she has a hard time working with others; she has an attitude and is unable to keep
14 her mouth shut; she is unable to control her emotions on the job and becomes violent with
15 coworkers; she feels homicidal; she has trouble with her hands due to seizures; her shoulder
16 seizes up; she has degenerative disc disease in her back; osteoarthritis in her hands; and, her
17 ability to be physically active is limited." (AR 21).

18 ALJ Riley Atkins held a hearing on January 7, 2010, taking testimony from plaintiff and
19 vocational expert (VE) Paul K. Morrison. On May 27, 2010, the ALJ issued a decision finding

21 Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal
22 Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to
Electronic Case Files, pursuant to the official policy on privacy adopted by the Judicial
Conference of the United States.

01 plaintiff not disabled. (AR 16-26.)

02 Plaintiff timely appealed. On February 18, 2011, the Appeals Council denied
03 plaintiff's request for review (AR 1-4), making the ALJ's decision the final decision of the
04 Commissioner. Plaintiff appealed to this Court.

05 **JURISDICTION**

06 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

07 **DISCUSSION**

08 The Commissioner follows a five-step sequential evaluation process for determining
09 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920. At step one, the ALJ
10 must determine whether the claimant is gainfully employed. The ALJ found plaintiff had not
11 engaged in substantial gainful activity since the alleged amended onset date.

12 At step two, the ALJ must determine whether a claimant suffers from a severe
13 impairment. The ALJ found that the plaintiff has the following severe impairments: (1)
14 bipolar disorder type II; (2) intermittent explosive disorder; (3) polysubstance dependence
15 (sustained full remission); (4) history of shoulder/neck pain; and (5) chronic obstructive
16 pulmonary disease. (AR 18). At step three, the ALJ found plaintiff did not have an
17 impairment or combination of impairments that met or medically equaled a listing.

18 If a claimant's impairments do not meet or equal a listing, the Commissioner must
19 assess residual functional capacity (RFC) and determine at step four whether the claimant has
20 demonstrated an inability to perform past relevant work. The ALJ assessed plaintiff as able to
21 perform sedentary work as defined in 20 C.F.R. 404.1567(b) and 416.967(b), except that she
22 "should avoid concentrated exposure to environmental irritants; she is limited to simple routine

01 repetitive work; she is limited to no public contact; and, she generally works best alone and not
02 as part of a team.” (AR 20). With that assessment, the ALJ concluded plaintiff could not
03 perform any past relevant work.

04 If a claimant demonstrates an inability to perform past relevant work, or has no past
05 relevant work, the burden shifts to the Commissioner to demonstrate at step five that the
06 claimant retains the capacity to make an adjustment to work that exists in significant levels in
07 the national economy. Considering the claimant’s age, education, work experience, RFC, and
08 VE testimony, the ALJ determined that jobs exist in significant numbers in the national
09 economy that plaintiff could perform, such as paper sorter and paper sorter/recycler.

10 This Court’s review of the ALJ’s decision is limited to whether the decision is in
11 accordance with the law and the findings supported by substantial evidence in the record as a
12 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
13 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
14 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
15 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
16 supports the ALJ’s decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
17 F.3d 947, 954 (9th Cir. 2002).

18 Plaintiff asserts that the ALJ failed to properly evaluate the medical evidence,
19 improperly found that plaintiff was not credible regarding the extent of her pain and limitations,
20 erred in finding that plaintiff did not meet or equal a Listing, improperly assessed her RFC, and
21 based his step five finding on an incorrect RFC. In addition, she claims that the Commissioner
22 erred by failing to remand her claim based on the new evidence she submitted to the Appeals

01 Council. Plaintiff requests remand for further administrative proceedings. The
02 Commissioner argues that the ALJ's decision is supported by substantial evidence and should
03 be affirmed.

Medical Evidence

Plaintiff contends that the ALJ failed to properly evaluate the medical evidence in several ways. First, plaintiff argues that the ALJ failed to address the opinion of Jamie Carter, Ph.D, a clinical psychologist who opined in 2003 that plaintiff had marked limitations in some areas. (AR 300-03). In that opinion, however, Dr. Carter estimated that the limitations would exist for a maximum of twelve months. Because Dr. Carter's opinion relates to a period of time years before plaintiff's alleged onset date, the ALJ did not err in not specifically addressing it.

12 Second, plaintiff notes that the ALJ’s decision is devoid of any reference to the opinion
13 of treating physician Richard Shuey. Although an ALJ is not required to address all medical
14 evidence in the record, an ALJ errs when he or she “completely ignores or neglects to mention a
15 treating physician’s medical opinion that is relevant to the medical evidence being discussed.”
16 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1038 (9th Cir. 2007). The Commissioner argues that Dr.
17 Shuey’s opinion was “consistent with both the ALJ’s listing of Plaintiff’s severe impairments
18 and the residual functional capacity analysis.” (Commissioner’s Brief at p. 11). The record
19 does not support that assertion. In fact, Dr. Shuey, a psychiatrist, diagnosed plaintiff in May
20 2008 with “major depressive disorder, recurrent, severe.” (AR 407). The ALJ neither
21 discussed that finding nor included depression in the list of plaintiff’s severe impairments.
22 Moreover, Dr. Shuey’s finding regarding plaintiff’s depression was consistent with other

01 evidence in the record that the ALJ failed to address. (AR 406; treating physician Patricia
02 Gardner increased plaintiff's Zoloft in December 2008 "because her depressive symptoms are
03 rather prominent."). Therefore, Dr. Shuey's findings were relevant and the ALJ erred by
04 ignoring them.

05 Third, plaintiff contends that the ALJ erred by discounting the low Global Assessment
06 of Functioning (GAF) scores her treatment providers assigned. The ALJ noted,

07 The notes from Columbia River Mental Health Services indicate her GAF score varied
08 significantly throughout her treatment. In February 2008, it was noted to be 35, and in
09 May 2008, it increased to 50 after just a few months of treatment, but periodically
10 cycled up and down throughout her treatment. However, a GAF score is only a
snapshot of an individual's condition at a given time, and the numerical value should be
considered in combination with the narrative report and the medical evidence. (AR
22).

11 In dismissing plaintiff's low GAF scores as a "snapshot" and part of a periodic cycle,
12 the ALJ apparently failed to consider that all of plaintiff's treating sources, including her
13 treating psychiatrist and several treating therapists, listed her GAF at 50 or lower.² (AR 229,
14 311, 394, 396, 398, 407). The scores were consistent with the treaters' other findings. (*Id.*).
15 Therefore, the ALJ erred in failing to adequately consider the low GAF scores assigned by
16 plaintiff's treating sources when evaluating the seriousness of her conditions and resulting
17 limitations.

18 Fourth, plaintiff contends that the ALJ erred by stating, "The medical record does not
19 support the claimant's alleged mental impairments." (AR 22). That broad statement appears
20 to reflect poor drafting rather than an actual finding because in his opinion, the ALJ found that

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22 2 A GAF of 31-40 indicates some impairment in reality testing or communication OR major impairment
in several areas, such as work or school, family relations, thinking or mood. A GAF of 41-50 indicates serious
symptoms OR any serious impairment in social, occupational, or school functioning.

01 plaintiff suffers from severe mental impairments and from resulting limitations. (AR 18-20).
02 Reading the decision as a whole demonstrates that the ALJ concluded that plaintiff's mental
03 impairments exist but are not as limiting as alleged. Plaintiff assigns error to that finding. In
04 evaluating the limitations resulting from plaintiff's mental impairments, the ALJ primarily
05 relied on two sources: (1) a report from Todd Bowerly, Ph.D, who conducted a psychological
06 evaluation of plaintiff on July 2, 2007, and (2) a residual functional capacity assessment
07 completed by Kristin Harrison, Psy.D, a state agency consultant. Dr. Bowerly opined that
08 plaintiff had a GAF score of 60. (AR 23). Dr. Harrison opined that plaintiff "can understand,
09 remember, and complete simple and some more complex tasks; she should not work with the
10 public, but she can work in an environment with limited coworker contact." (*Id.*). Dr.
11 Bowerly's and Dr. Harrison's opinions are inconsistent with the opinions of Dr. Shuey and
12 plaintiff's treating therapists and with the GAF scores they assigned. Where contradicted, a
13 treating or examining physician's opinion may not be rejected without "'specific and legitimate
14 reasons' supported by substantial evidence in the record for so doing." *Lester v. Chater*, 81
15 F.3d 821, 830-31 (9th Cir. 1996) (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir.
16 1983)). The ALJ may reject physicians' opinions "by setting out a detailed and thorough
17 summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and
18 making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*,
19 881 F.2d at 751). Rather than merely stating his conclusions, the ALJ "must set forth his own
20 interpretations and explain why they, rather than the doctors', are correct." *Id.* (citing *Embrey*
21 *v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

22 The ALJ explained that he gave "Dr. Harrison's opinion great weight because it is in

01 accordance with the medical evidence as a whole, and the claimant's own testimony concerning
02 her abilities." (AR 23). That conclusory, and incorrect, statement is insufficient to meet the
03 ALJ's burden. *Reddick*, 157 F.3d at 725. In fact, Dr. Harrison's opinion is inconsistent with
04 plaintiff's testimony, in which she explained that she was frequently unable to leave her house
05 due to anxiety and depression. (AR 51). The ALJ also failed to consider the fact that Dr.
06 Harrison, who reviewed the record in July 2007, necessarily did not consider any of the later
07 medical records.

08 Similarly, the ALJ stated that Dr. Bowerly "noted that the claimant's cognitive
09 condition is stable and is not expected to change over time." (AR 23). However, plaintiff is
10 not contending that her cognitive skills are limited. Rather, she claims limitations in social and
11 emotional functioning. In that vein, the ALJ failed to address Dr. Bowerly's opinion that
12 plaintiff has "limited social interaction and adaptive skills secondary to mood-related problems
13 and personality-based difficulties." (AR 245). The ALJ's selective parsing of the record is
14 not a legitimate reason to credit Dr. Bowerly's opinion over that of plaintiff's treating sources.
15 See, e.g., *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003) (explaining that
16 although the ALJ is not required to discuss every piece of evidence in the record, he may not
17 "selectively analyze" the record).

18 Finally, plaintiff argues that in evaluating the extent of the limitations caused by her
19 mental impairments, the ALJ focused only on her limitations in relating to the public and to
20 coworkers. On remand, the ALJ should also consider the evidence regarding the other
21 limitations resulting from plaintiff's mental impairments, including Dr. Bowerly's opinion, the
22 GAF scores, and plaintiff's statements regarding her occasional inability to leave the house.

01 (AR 48, 51, 245, 381, 407, 412).

02 For all of those reasons, the ALJ erred in his evaluation of the medical evidence. On
03 remand, the ALJ should reassess plaintiff's mental impairments, taking into consideration all of
04 the issues raised and discussed above.

05 Plaintiff's Credibility

06 Once the claimant produces medical evidence of an underlying impairment, the
07 Commissioner may not discredit the claimant's testimony as to subjective symptoms merely
08 because they are unsupported by objective evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343
09 (9th Cir. 1991) (en banc). Instead, where there is no affirmative evidence showing that the
10 claimant is malingering, the Commissioner's reasons for rejecting the claimant's testimony
11 must be "clear and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996) (internal
12 quotation omitted). "General findings are insufficient; rather, the ALJ must identify what
13 testimony is not credible and what evidence undermines the claimant's complaints." *Id.* In
14 this case, the Commissioner does not dispute that the clear and convincing standard applies.

15 As set forth above, the ALJ discounted plaintiff's contention that she was disabled due
16 to her mental impairments in part because her allegations were inconsistent with the medical
17 evidence. Because the ALJ erred in his evaluation of the psychiatric evidence, he must also
18 reevaluate the findings regarding plaintiff's credibility in that area.

19 Regarding plaintiff's physical impairments, the ALJ concluded, "The objective medical
20 evidence is fully consistent with the above residual functional capacity and is inconsistent with
21 the claimant's allegations of disabling levels of pain due to her physical impairments."
22 Plaintiff argues that the ALJ failed to consider "the medical evidence which supports Reeve's

01 allegations of back pain and postural and manipulative limitations.” (Plaintiff’s Opening Brief
02 at p. 13). The reference to “manipulative limitations” presumably relates to plaintiff’s
03 allegation during the hearing that she has “a lot of problems with the left” hand and trouble
04 gripping things because she broke three fingers in that hand. (AR 37). However, two
05 physicians reviewed x-rays of plaintiff’s hands, one in May 2003 and the other in September
06 2007, and neither found evidence of fractures. Although those physicians noted “mild”
07 swelling and “early osteoarthritic changes,” the ALJ did not err in concluding the evidence did
08 not support the significant limitations plaintiff alleged. (AR 189, 270). In addition, the ALJ
09 noted that in August 2007, Dr. Kim Webster examined plaintiff, found no manipulative
10 limitations, and found that plaintiff’s grasping ability was “completely intact.” (AR 22, 266);
11 *Carmickle v. Comm’r of SSA*, 533 F.3d 1155, 1161 (9th Cir. 2008) (“Contradiction with the
12 medical record is a sufficient basis for rejecting the claimant’s subjective testimony.”) (citing
13 *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)). The ALJ provided clear and
14 convincing reasons for finding that plaintiff was not credible regarding the extent of her hand
15 limitations.

16 Plaintiff also contends that the ALJ erred in finding that she was not credible regarding
17 the extent of her back/neck pain and spasms. Plaintiff argues that the medical evidence
18 supports her allegations of disabling pain. In 2003, Dr. Bruce Bell examined plaintiff, who
19 complained of persistent “discomfort in her neck, mid and low back area,” and persistent
20 muscle spasms along her spine. (AR 308). Upon examination, Dr. Bell found spasms in
21 plaintiff’s neck or back. (AR 309). He diagnosed her with myofascial pain syndrome, with
22 no evidence of herniated disk or radiculopathy, and impulsive behavior disorder. (AR 310).

01 In the recommendations portion of his report, Dr. Bell wrote, “I told the patient the most
02 striking thing as far as I see is the muscle spasm. I do not think that is going to change, and it is
03 pretty much the same as what I saw back in 1999. She needs to be careful with lifting,
04 twisting, and bending. She probably should do sedentary work if it is available.” (*Id.*). On a
05 form, he checked the box marked “No” in response to the question, “Is treatment likely to
06 restore the person’s ability to perform at least half-time in a normal day to day work setting?”
07 (AR 307). The ALJ gave Dr. Bell’s opinion little weight because his evaluation was
08 conducted several years prior to plaintiff’s alleged onset date and prior to Dr. Webster’s
09 consultative evaluation, performed in 2007. (AR 22). Dr. Webster found “muscle tightness
10 with a normal musculoskeletal exam” and opined that plaintiff could walk, stand and sit without
11 restriction in an 8-hour workday. (AR 269). Both the remoteness of time and the more
12 recent, contradictory opinion of Dr. Webster were specific and legitimate reasons to discount
13 Dr. Bell’s opinion. The ALJ also noted that in 2007, Dr. Threlkeld found degenerative joint
14 disease of the cervical spine, normal prevertebral soft tissues, and a “gentle left vertex lumbar
15 scoliosis.” (AR 21, 270-73). Moreover, the ALJ noted that plaintiff’s course of treatment and
16 use of medication were not consistent with disabling levels of pain. (AR 23). Plaintiff had
17 not received surgery or aggressive treatment for the conditions. (AR *Id.*). Plaintiff does not
18 dispute that she has not sought treatment for her back or hand pain during the relevant time
19 period. No physician had prescribed pain relievers for her neck or back. Further, despite
20 plaintiff’s allegation of postural limitations, Dr. Webster found none. (AR 22, 266-69).
21 Similarly, Dr. Michael Sherrill, who examined plaintiff in September 2007, opined that plaintiff
22 had no postural limitations. (AR 275-79).

The ALJ also noted that plaintiff's activities of daily living, including preparing her own meals, performing household chores, and shopping for groceries, were inconsistent with her allegations of disabling pain. (AR 24). The ability "to perform various household chores such as cooking, laundry, washing dishes, and shopping" is a clear and convincing reason to discount plaintiff's testimony, as is "an extremely poor work history."³ *Thomas*, 278 F.3d at 959. Therefore, the ALJ provided clear and convincing reasons for discounting plaintiff's credibility regarding the extent of her pain and limitations caused by her neck and back conditions.

During the hearing, plaintiff affirmed that she has “trouble” with chronic obstructive pulmonary disease (COPD), which causes her to become “winded” when performing housework. (AR 46). Although plaintiff argues that the ALJ rejected her testimony, he found that the COPD was a severe impairment. However, he did not find that the COPD results in work related limitations, and plaintiff does not contend otherwise. Finally, the ALJ properly determined that plaintiff’s continued smoking undermined her credibility regarding the limitations from her respiratory condition. *Bray v. Commissioner*, 554 F.3d 1219, 1227 (9th Cir. 2009). Accordingly, the ALJ provided clear and convincing reasons for finding that plaintiff’s COPD was not as limiting as she alleged.

Appeals Council Evidence

In support of her appeal, plaintiff provided the Appeals Council with two new pieces of evidence from Columbia River Mental Health Services: (1) an April 20, 2010 letter written by

22 3 Reeves claims to have been disabled since 2007, so she is not alleging a medical inability to work prior
to that time.

01 Pam Hilberg, a therapist, who wrote that plaintiff's "mental health symptoms will make it
02 impossible to ever work at a job. She suffers with lack of motivation, lack of interest,
03 uncontrollable anger outbursts, severe problems getting out of the house, no education beyond
04 6th grade, and inability to work with the public" (AR 412); and (2) a letter dated October 21,
05 2010 from Bobbi Barlow, LMHCA, who noted that plaintiff was receiving treatment and urged
06 consideration of her mental health condition in determining whether plaintiff was able to work
07 (AR 413).

08 Plaintiff contends that the Appeals Council erred by declining her request for review
09 based on the new evidence. In doing so, the Appeals Council stated that the opinion from Ms.
10 Hilberg was not material because it was "well after the [ALJ's] decision." (AR 2). In fact,
11 the letter was written only three months after the decision. The Appeals Council apparently
12 did not consider whether the evidence "relates to the period on or before" the ALJ's decision as
13 required. 20 C.F.R. § 404.976(b)(1). Therefore, the Commissioner erred. Although the
14 court could consider the new evidence, it directs the ALJ to do so on remand because this case is
15 being remanded for other reasons.

16 In sum, on remand, the ALJ must reassess the medical evidence regarding plaintiff's
17 psychiatric impairments, reevaluate plaintiff's credibility in light of the properly credited
18 medical evidence, and reassess the combined effect of all of plaintiff's impairments. During
19 the reassessment process, the ALJ should also assess the newly submitted evidence to the
20 Appeals Council. Because the errors set forth above will require a reevaluation of the medical
21 evidence, plaintiff's credibility, and her RFC, the court will not address plaintiff's contention
22 that the Commissioner failed to meet his burden at step five of showing that she can perform

01 other work in the national economy. Rather, the ALJ should reconsider steps four and five of
02 the sequential evaluation process as necessary on remand.

03

04 **CONCLUSION**

05 For the reason set forth above, this matter should be REMANDED for further
06 administrative proceedings.

07 DATED this 6th day of March, 2012.

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09 
10 Mary Alice Theiler
11 United States Magistrate Judge
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